

LAW OFFICES OF LESLIE G. MCMURRAY  
Leslie G. McMurray, S.B. No. 156263  
Magnolia Professional Building  
12520 Magnolia Blvd., Suite 206  
Valley Village, California 91607  
Telephone: (818) 505-9902  
Facsimile: (818) 505-1366

Attorneys for Plaintiff  
BNSF Railway Company (formerly  
THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY)

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

THE BURLINGTON NORTHERN  
AND SANTA FE RAILWAY  
COMPANY, a Corporation,

Plaintiff,

v.

PENNY NEWMAN GRAIN  
COMPANY; and Roes 1-5, inclusive,

Defendants

) Case No. 1:05-cv-00105 AWI SMS

) **STIPULATION TO PERMIT FILING**  
) **OF A SECOND AMENDED**  
) **COMPLAINT BY BNSF WAIVER OF**  
) **SERVICE AND ORDER THEREON**

) TRIAL DATE: NONE

TO ALL PARTIES AND THEIR COUNSEL OF RECORD AND TO THE  
HONORABLE JUDGE ANTHONY W. ISSHII,

Plaintiff BNSF RAILWAY COMPANY ([“BNSF”], the former name of which  
was THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY at  
the time this Complaint in this matter was drafted) and defendant PENNY NEWMAN

1 GRAIN COMPANY (PENNY NEWMAN) hereby stipulate and agree to the following  
2 for the sake of economy and for the convenience of the court:

3  
4 WHEREAS the parties are actively engaged in settlement discussions in this  
5 matter;

6 WHEREAS BNSF has sued PENNY NEWMAN in connection with charges  
7 relating to rail car movements to and from PENNY NEWMAN's Fresno, California and  
8 Guernsey, California facilities and BNSF contends that charges have continued to accrue  
9 relating to services performed and demurrage accrued in connection with such  
10 movements which BNSF wishes to include in the pleadings to bring them up to date;

11 WHEREAS BNSF wishes to avoid the expense of utilizing the traditional mens of  
12 service of the summons and complaint by personal service on an officer or agent of  
13 PENNY NEWMAN;

14 WHEREAS the parties wish to avoid any expense to the Court by motion practice  
15 on leave to amend the complaint;

16 WHEREAS the parties anticipate this matter will settle in the very near future;

17  
18 NOW THEREFORE the parties hereto do stipulate and agree to the following:

19  
20 1. BNSF may file the Second Amended Complaint against PENNY  
21 NEWMAN  
22 (which is lodged concurrently herewith);

23  
24 2. BNSF may effectuate binding service of process of the Second Amended  
25 Complaint herein on PENNY NEWMAN by mailing a copy of the Second Amended  
26 Complaint on its counsel, Mr. Kenneth Baldwin at Law Offices of McCormick, Barstow,  
27 Sheppard, Wayte & Carruth, LLP at 5 River Park Place East, Fresno, California 93720;

1           3.       PENNY NEWMAN shall have twenty three days from the date of mail  
2 service of the Second Amended Complaint within which to answer or otherwise  
3 respond to the Complaint herein while the parties engage in informal settlement  
4 negotiations.

5  
6           4.       The Court will set a Scheduling Conference in this matter after Penny  
7 Newman has filed its response to the Second Amended Complaint.

8           IT IS SO STIPULATED.

9  
10  
11 Dated: April 21, 2005

LAW OFFICES OF LESLIE G.  
MCMURRAY

12  
13                   /s/ Leslie McMurray  
14 BY: \_\_\_\_\_  
15           LESLIE G. MCMURRAY  
16 Attorneys for Plaintiff BNSF RAILWAY  
17 COMPANY (FORMERLY THE  
18 BURLINGTON NORTHERN AND  
19 SANTA FE RAILWAY COMPANY)

20 Dated: April 21, 2005

MCCORMICK BARSTOW, SHEPPARD,  
WAYTE & CARRUTH, LLP

21  
22                   /s/ Kenneth Baldwin  
23 BY: \_\_\_\_\_  
24           KENNETH BALDWIN  
25 Attorneys for Defendant PENNY  
26 NEWMAN GRAIN COMPANY  
27  
28

**ORDER ON STIPULATION**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

The Court, having reviewed the above stipulation of the parties and good cause appearing therefore, hereby orders as follows:

1. BNSF may file the Second Amended Complaint lodged concurrently with the Stipulation against PENNY NEWMAN;

2. BNSF may effectuate binding service of process of the Second Amended Complaint on PENNY NEWMAN by mailing a copy of the Second Amended Complaint on its counsel, Mr. Kenneth Baldwin at Law Offices of McCormick, Barstow, Sheppard, Wayte & Carruth, LLP at 5 River Park Place East, Fresno, California 93720;

3. PENNY NEWMAN shall have twenty three days from the date of mail service of the Second Amended Complaint within which to answer or otherwise respond to the Complaint herein.

4. The Court will set a Scheduling Conference in this matter after Penny Newman has filed its response to the Second Amended Complaint.

IT IS SO ORDERED.

**Dated: April 25, 2005**  
icido3

**/s/ Sandra M. Snyder**  
UNITED STATES MAGISTRATE JUDGE